

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TAMI GALLUPE,

Plaintiff,

V.

SEDGWICK CLAIMS
MANAGEMENT SERVICES, INC.;
MONSANTO COMPANY
DISABILITY PLAN; and MONSANTO
COMPANY EMPLOYEE WELFARE
BENEFIT PLAN.

Defendants.

CASE NO. 2:17-cv-001775

**ORDER GRANTING
JOINT MOTION FOR
PROTECTIVE ORDER**

PURPOSES AND LIMITATIONS

Defendants believe that discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. While Plaintiff does not agree, she will not oppose Defendants' petition to enter the following Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are

1 entitled to confidential treatment under the applicable legal principles, and it does not
2 presumptively entitle parties to file confidential information under seal.

3 2. **“CONFIDENTIAL” MATERIAL**

4 “Confidential” material shall include the following documents and tangible things
5 produced or otherwise exchanged: documents that make up the administrative record, medical
6 records, personnel/employment performance records, and proprietary internal policies and
7 procedures.

8 3. **SCOPE**

9 The protections conferred by this agreement cover not only confidential material (as
10 defined above), but also (1) any information copied or extracted from confidential material; (2) all
11 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
12 conversations, or presentations by parties or their counsel that might reveal confidential material.

13 However, the protections conferred by this agreement do not cover information that is in
14 the public domain or becomes part of the public domain through trial or otherwise.

15 4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

16 4.1 **Basic Principles.** A receiving party may use confidential material that is disclosed
17 or produced by another party or by a non-party in connection with this case only for prosecuting,
18 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
19 categories of persons and under the conditions described in this agreement. Confidential material
20 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
21 that access is limited to the persons authorized under this agreement.

22 4.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise ordered
23 by the court or permitted in writing by the designating party, a receiving party may disclose any
24 confidential material only to:

25 (a) the receiving party’s counsel of record in this action, as well as employees
26 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

5 (c) experts and consultants to whom disclosure is reasonably necessary for this
6 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (d) the court, court personnel, and court reporters and their staff;

8 (e) copy or imaging services retained by counsel to assist in the duplication of
9 confidential material, provided that counsel for the party retaining the copy or imaging service
10 instructs the service not to disclose any confidential material to third parties and to immediately
11 return all originals and copies of any confidential material;

(g) the author or recipient of a document containing the information or a
custodian or other person who otherwise possessed or knew the information.

20 4.3 Filing Confidential Material. Before filing confidential material or discussing or
21 referencing such material in court filings, the filing party shall confer with the designating party
22 to determine whether the designating party will remove the confidential designation, whether the
23 document can be redacted, or whether a motion to seal or stipulation and proposed order is
24 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards
25 that will be applied when a party seeks permission from the court to file material under seal.

26

1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
3 or non-party that designates information or items for protection under this agreement must take
4 care to limit any such designation to specific material that qualifies under the appropriate
5 standards. The designating party must designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify, so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not swept
8 unjustifiably within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
12 and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated for
14 protection do not qualify for protection, the designating party must promptly notify all other parties
15 that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this
17 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
18 ordered, disclosure or discovery material that qualifies for protection under this agreement must
19 be clearly so designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
22 the designating party must affix the word "CONFIDENTIAL" to each page that contains
23 confidential material. If only a portion or portions of the material on a page qualifies for protection,
24 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
25 markings in the margins).

26

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate qualified information or items does not, standing alone, waive the designating party's
14 right to secure protection under this agreement for such material. Upon timely correction of a
15 designation, the receiving party must make reasonable efforts to ensure that the material is treated
16 in accordance with the provisions of this agreement.

17 || 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
19 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
21 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
22 challenge a confidentiality designation by electing not to mount a challenge promptly after the
23 original designation is disclosed.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
25 regarding confidential designations without court involvement. Any motion regarding confidential
26 designations or for a protective order must include a certification, in the motion or in a declaration

1 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
2 affected parties in an effort to resolve the dispute without court action. The certification must list
3 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
4 to-face meeting or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
6 intervention, the designating party may file and serve a motion to retain confidentiality under Local
7 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
8 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
9 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
10 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
11 the material in question as confidential until the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
16 must:

17 (a) promptly notify the designating party in writing and include a copy of the
18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the subpoena or order is
21 subject to this agreement. Such notification shall include a copy of this agreement; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
26 material to any person or in any circumstance not authorized under this agreement, the receiving

1 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
2 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
3 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
4 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
5 Bound" that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
7 MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of the
10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
11 is not intended to modify whatever procedure may be established in an e-discovery order or
12 agreement that provides for production without prior privilege review. The parties agree to the
13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals, each receiving
16 party must return all confidential material to the producing party, including all copies, extracts and
17 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
19 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
20 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
21 product, even if such materials contain confidential material.

22 The confidentiality obligations imposed by this agreement shall remain in effect until a
23 designating party agrees otherwise in writing or a court orders otherwise.

24
25
26

1 BASED ON THE PRECEDING, THE PARTIES JOINTLY MOVE THE COURT TO ENTER
2 THE ABOVE PROTECTIVE ORDER.

3 DATED: June 27, 2018

/s/ Mel Crawford

Mel Crawford
LAW OFFICE OF MEL CRAWFORD
9425 35th Avenue NE; Suite C
Seattle, WA 98115

6 Attorney for Plaintiff

7 DATED: June 27, 2018

/s/ Farron Curry

SCHWABE, WILLIAMSON & WYATT,
P.C.
Farron Curry, WSBA #40559
Email: fcurry@schwabe.com
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010

12 Caroline Turner English (*pro hac vice*)
13 Alison Lima Andersen (*pro hac vice*)
14 Brandi G. Howard (*pro hac vice*)
15 ARENT FOX LLP
16 Email: caroline.english@arentfox.com
17 alison.andersen@arentfox.com
brandi.howard@arentfox.com
1717 K Street, NW
Washington, DC 20006-5344

18 Attorneys for Defendants

19
20
21
22
23
24
25
26

1 IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding
4 in any other court, constitute a waiver by the producing party of any privilege applicable to those
5 documents, including the attorney-client privilege, attorney work-product protection, or any other
6 privilege or protection recognized by law.

7

8 DATED: June 28, 2018

9

10 
11 Marsha J. Pechman
12 United States District Judge

13

14

15

16

17

18

19

20

21

22

23

24

25

26